COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Action4Canada v. British Columbia (Attorney General),* 2024 BCCA 59

Date: 20240223
Docket: CA48578

Between:

Action4Canada, Linda Morken, Gary Morken, Jane Doe #1, Jane Doe #2, Ilona Zink, Valerie Ann Foley, Pastor Randy Beatty and Jane Doe #3

Appellants
(Plaintiffs)

And

His Majesty the King in Right of British Columbia, Prime Minister Justin Trudeau, Chief Public Health Officer Theresa Tam, Dr. Bonnie Henry, Premier John Horgan, Adrian Dix, Minister of Health, Jennifer Whiteside, Minister of Education, Mable Elmore, Parliamentary Secretary for Seniors' Services and Long-Term Care, Mike Farnworth, Minister of Public Safety and Solicitor General, British Columbia Ferry Services Inc. (operating as British Columbia Ferries), Omar Alghabra, Minister of Transport, Vancouver Island Health Authority, The Royal Canadian Mounted Police (RCMP), the Attorney General of Canada, Brittney Sylvester, Peter Kwok, Providence Health Care, Canadian Broadcasting Corporation and Translink (British Columbia)

Respondents
(Defendants)

Before: The Honourable Chief Justice Marchand
The Honourable Justice Dickson
The Honourable Mr. Justice Voith

On appeal from: An order of the Supreme Court of British Columbia, dated August 29, 2022 (*Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507, Vancouver Docket S217586).

Counsel for the Appellants (via videoconference): R. Galati

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Counsel for the Respondents His Majesty the King in Right of the Province of British Columbia, Dr. Bonnie Henry, Premier John Horgan, Adrian Dix, Minister of Health, Jennifer Whiteside, Minister of Education, Mike Farnworth, Minister of Public Safety and Solicitor General and Mable Elmore, Parliamentary Secretary for Seniors' Services and Long-Term Care:	E.C. Lapper R.L. Shaw
Counsel for the Respondents the Attorney General of Canada, Prime Minister Justin Trudeau, the Royal Canadian Mounted Police (RCMP), Chief Public Health Officer Dr. Theresa Tam and Omar Alghabra, Minister of Transport:	A.C. Gatti O. French
Counsel for the Respondents Peter Kwok and TransLink (British Columbia):	T.J. Delaney
Counsel for the Respondents Vancouver Island Health Authority and Providence Health Care:	T.J. Wedge
Counsel for the Respondents British Columbia Ferry Services Inc. and Brittney Sylvester:	C. Bildfell
Place and Date of Hearing:	Vancouver, British Columbia February 14, 2024
Place and Date of Judgment:	Vancouver, British Columbia February 23, 2024

Written Reasons by:
The Honourable Chief Justice Marchand

Concurred in by:
The Honourable Justice Dickson
The Honourable Mr. Justice Voith

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Summary:

The appellants' 391-page long notice of civil claim included wide-ranging allegations of a global conspiracy, and challenged the scientific and constitutional foundation of the federal and provincial responses to the COVID-19 pandemic. The chambers judge allowed the respondents' applications to strike the notice of civil claim on the basis that it was prolix. He granted the appellants liberty to amend the notice of civil claim and file a fresh pleading. On appeal, the appellants object to statements made by the judge that certain of their claims are improper in a civil action. They further submit that the judge erred in awarding the respondents costs. They contend that success was divided and that costs are often not awarded in public interest litigation.

Held: Appeal dismissed. The appellants have not identified a reviewable error. Regarding the pleadings, the appellants to do not challenge the judge's orders. No appeal lies from his reasons. Regarding costs, this Court cannot and will not substitute its discretion for that of the chambers judge.

Reasons for Judgment of the Honourable Chief Justice Marchand:

[1] Pleadings play a central role in the conduct of civil litigation and access to justice. Their purpose is to clearly, concisely and precisely define the issues of fact and law to be determined, inform the other side of the case to be met, determine the nature and scope of pre-trial procedures, and guide the trial process: *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2012 BCCA 196 at para. 1; *Sahyoun v. Ho*, 2013 BCSC 1143 at paras. 16–19; *Supreme Court Civil Rules*, B.C. Reg. 168/2009, R. 3-1(2) [*Rules*].

[2] Prolix pleadings are improper. They lead to confusion, unfairness, delay and expense, and impede the litigation they are intended to facilitate: see e.g., *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 22–23, 44, 58. They also occupy inordinate court resources, preventing other litigants from accessing the court services they require and deserve.

[3] Here, the appellants' notice of civil claim is 391 pages long. Part 1 ("Statement of Facts") is over 300 pages long, contains more than 1,000 paragraphs and sub-paragraphs, and includes hundreds of footnotes, some of which contain hyperlinks to various websites. Part 2 ("Relief Sought") is over 40 pages long and

seeks, among other things, over 200 declarations. Part 3 (“Legal Basis”) is almost 30 pages long.

[4] The notice of civil claim includes wide-ranging allegations of a global conspiracy, and challenges the scientific and constitutional foundation of the federal and provincial responses to the COVID-19 pandemic. To give a sense of the breadth and nature of the allegations, the appellants’ “summary” of the factual basis of their claims includes (at 310–311, para. 283(d) of the notice of civil claim) the allegation that the federal and provincial responses to the COVID-19 pandemic violated the appellants’ “statutory and constitutional rights” because:

> … the “COVID-pandemic” was pre-planned, and executed, as a false pandemic, through the [World Health Organization], by Billionaire, Corporate, and Organizational Oligarchs the likes of Bill Gates, [Global Alliance for Vaccines and Immunization, now Gavi, the Vaccine Alliance], the [World Health Organization], and their former and current associates such as Theresa Tam and Bonnie Henry, the [World Economic Forum], and others, in order to install a New World (Economic) Order with:
>
> (i) **De facto** elimination of small businesses;
>
> (ii) Concentration of wealth and the power to control economic activity in large global corporations;
>
> (iii) To disguise a massive bank and corporate bail-out;
>
> (iv) To effect global, **mandatory** vaccination with chip technology, to effect total surveillance and testing of any and all citizens, including the Plaintiffs;
>
> (v) To shift society, in all aspects into a virtual[] world at the control of these vaccine, pharmaceutical, technological, globalized oligarchs, whereby the Plaintiffs, and all others, cannot organize [or] congregate[; and]
>
> (vi) To effectively immobilize resistance to the agenda by neutering Parliaments and the Courts, and by extension the Constitution and Constitutional Democracy and Sovereignty, in short to obtain “global governance”.
>
> [Emphasis in original.]

[5] In reasons indexed at 2022 BCSC 1507 (“RFJ”), the chambers judge sensibly concluded that the notice of civil claim is prolix and cannot be properly answered: RFJ at paras. 45, 74. He also concluded that it is “bad beyond argument” and “cannot be mended”: RFJ at paras. 45, 47–48. He, therefore, granted the respondents’ applications to strike the pleading in its entirety: RFJ at paras. 48, 74.

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[6] Next, the chambers judge considered whether to dismiss the appellants' claim or grant them leave to amend it. He concluded that "there may be legitimate claims that a plaintiff could advance against one or more of the defendants": RFJ at para. 50. He, therefore, granted the appellants leave to amend and stayed the action pending the filing of a fresh pleading: RFJ at para. 74.

[7] On the issue of costs, the judge noted that "each plaintiff is seeking money damages from one or more defendant": RFJ at para. 75. Having put the defendants to the expense of unnecessarily answering an improper pleading, the judge awarded each defendant costs "payable forthwith in any event of the cause": RFJ at paras. 75–76.

[8] In oral submissions, the appellants conceded that the notice of civil claim is prolix and must be redrafted. Although aware of the trite principle that appeals are taken from orders and not reasons, the appellants nevertheless advance the appeal to address various statements made by the judge regarding the propriety of various of their pleadings. In particular, the appellants take issue with the judge's statements at paras. 52–58 of the reasons for judgment that certain claims "are improper in a civil action", including claims seeking declarations relating to alleged criminal conduct and matters of science.

[9] The appellants point to para. 73 of the reasons for judgment where, after rejecting the defendants' arguments that the entire action be dismissed as "an abuse of process or clearly frivolous and vexatious", the judge held that "if the next iteration of [the notice of civil claim] contains the same, or similar, problems, then the defendants' arguments on these issues will be strengthened." The appellants contend that, in making these statements, the judge exceeded his jurisdiction and has effectively hamstrung them from advancing what they consider to be justiciable claims.

[10] I agree entirely with the respondents that the appellants have not identified a reviewable error. The passages at issue are clearly *obiter*. As I read the judge's reasons, he transparently and helpfully identified a number of areas of concern

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within the notice of civil claim. He did not make binding determinations. In the absence of a proper pleading, how could he?

[11] It is up to the appellants to redraft their notice of civil claim within the well-known boundaries of proper pleadings established by the *Rules* and authorities. If they choose to pursue claims the judge identified as problematic and are faced with an application to strike or dismiss, they will have to satisfy the front-line decision-maker that they have pleaded justiciable claims. If they do not, they have had fair warning of the possible consequences.

[12] The appellants also appeal the judge's costs order. They submit that success was divided in the sense that the judge declined to dismiss their claim. They also submit that costs are often not awarded in cases like this, which they assert to be a form of public interest litigation. In the alternative, they submit that costs should be awarded in the cause.

[13] Respectfully, the appellants have not identified a reviewable error in the judge's handling of costs. Rather, they ask this Court to substitute its discretion for that of the chambers judge. This we cannot and will not do.

[14] For all of these reasons, I would dismiss the appeal.

"The Honourable Chief Justice Marchand"

I agree:

"The Honourable Justice Dickson"

I agree:

"The Honourable Mr. Justice Voith"

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